

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm	Chair
Tom Burton	Commissioner
Marshall Johnson	Commissioner
Cynthia A. Kitlinski	Commissioner
Dee Knaak	Commissioner

In the Matter of the Petition of
Northern States Power Company
for Approval of a Competitive
Rate for Rahr Malting Company

ISSUE DATE: October 20, 1993

DOCKET NO. E-002/M-93-719

ORDER GRANTING INTERVENOR STATUS
AND APPROVING PETITION AS
MODIFIED

PROCEDURAL HISTORY

On March 3, 1993, Northern States Power Company (NSP or the Company) filed a petition seeking approval of an offer of competitive rates to Rahr Malting Company (Rahr). The matter was assigned Docket No. E-002/M-93-162 (the 162 Docket).

On May 28, 1993, the Commission issued its ORDER REJECTING PROPOSED COMPETITIVE RATE in the 162 Docket. In that Order the Commission found that the proposed competitive rate did not meet all the requirements of the competitive rate statute, Minn. Stat. § 216B.162 (1992).

NSP and Rahr continued to negotiate the competitive rate offering. On July 30, 1993, NSP submitted a second version of the proposed rate, modified to meet the Commission's concerns expressed in the May 28, 1993 Order. This version of the proposed competitive rate is the subject of the current proceedings.

On August 30, 1993, Minnesotans for an Energy-Efficient Economy (ME3), a nonprofit organization which monitors environmental issues, submitted comments regarding the proposed competitive rate.

On September 1, 1993, the Department of Public Service (the Department) filed comments.

Between September 15, 1993, and September 29, 1993, reply comments were submitted by NSP, the Department and ME3.

The matter came before the Commission for consideration on October 7, 1993.

FINDINGS AND CONCLUSIONS

I. ME3's Intervenor Status

Minn. Rules, part 7830.0600 and parts 7830.2200 through 7830.2400 provide for a process under which a person or entity who successfully petitions to intervene in a Commission proceeding may become a party to the proceeding.

In its August 30, 1993 comments, ME3 stated that it "looks forward to full participation in this docket." It also stated fully the basis of its concerns and the potential impact of the proposed competitive rate.

The Commission believes that ME3's participation in this docket may bring valuable insights from the grass-roots, environmentalist perspective. While ME3's request for intervenor status could have and should have been stated more clearly, ME3's filings fulfill the rule requirements for intervenor status. The Commission will grant ME3 intervenor status in this proceeding.

II. Statutory Background

In 1990 the Minnesota legislature passed Minn. Stat. § 216B.162, which allows electric utilities to offer service at reduced rates to large customers capable of meeting their energy needs through unregulated suppliers. Under the terms of this statute, the Commission must make a determination both on the utility's proposed competitive rate schedule and on a specific rate being offered under the schedule to a large customer. The proposed rate schedule must fulfill seven statutory terms and conditions, including a contract duration between one and five years; recovery of incremental costs of providing the service; and a maximum possible rate reduction which does not exceed the difference between the utility's applicable standard tariff and the cost to the customer of the lowest cost competitive energy supply.

In reviewing a specific competitive rate offered to a large customer, the Commission must determine that the rate meets the aforementioned terms and conditions unless a waiver would be in the public interest; that the consumer can obtain its energy requirements from an energy supplier not rate-regulated by the Commission; that the customer is not likely to take service from the utility unless the competitive rate is offered; and that it

is in the best interest of all other customers to offer the competitive rate to the customer subject to the effective competition.

The Minnesota legislature amended Minn. Stat. § 216B.162, subd. 7 to add a requirement that the Commission consider environmental and socioeconomic impacts when reviewing a rate proposal. Effective August 1, 1993, the statute now reads in relevant part:

In reviewing a specific rate proposal, the Commission shall determine:

(4) that after consideration of environmental and socioeconomic impacts it is in the best interest of all other customers to offer the competitive rate to the customer subject to effective competition.

A decision regarding a competitive rate proposal often requires consideration of a cogeneration facility which is offering the "effective competition" to the large customer. Minn. Stat. § 216B.164 addresses issues raised by cogeneration and small power production. Subd. 1 of that statute reads:

Scope and purpose. This section shall at all times be construed in accordance with its intent to give the maximum possible encouragement to cogeneration and small power production consistent with protection of the ratepayers and the public.

Consideration of the legislative endorsement of cogeneration facilities must therefore be part of the Commission's decision regarding a competitive rate which is offered as an alternative to cogeneration.

III. History of the NSP/Rahr Competitive Rate Proposal

NSP filed a proposed competitive rate schedule as part of its 1991 rate case, Docket No. E-002/GR-91-1. The Commission approved the rate schedule in its November 27, 1991 final Order in that rate case.

In May of 1992, Rahr Malting Company, a large industrial customer of NSP's, approached the Company with a competitive rate proposition. Rahr, a barley malt producer, was in the process of expanding its plant. As part of the expansion, Rahr planned to install and operate a gas-fired cogeneration facility. Although Rahr planned to implement a cogeneration unit and had already obtained Commission approval for a bypass gas pipeline to fuel it, Rahr indicated that it would consider deferring completion of

the cogeneration facility if NSP could provide a competitive rate.

Following negotiations between Rahr and NSP, the parties signed a competitive rate contract which would be effective for a five year period beginning January 1, 1994. This contract was submitted to the Commission and rejected by Commission Order dated May 28, 1993. The parties resumed negotiating the terms of the competitive rate, modifying the proposal in an effort to answer the Commission's objections. The parties arrived at a reduced competitive rate discount resulting from the assumption of a higher cost of capital, modified treatment of depreciation expenses, and a revision in the cost of natural gas for the cogeneration machine. Other than the lower competitive rate discount, the terms and conditions of the parties' original competitive rate agreement remained the same.

NSP refiled the modified competitive rate discount on July 30, 1993.

IV. Comments of the Parties

A. NSP

NSP stated that the proposed competitive rate discount, as modified, now meets all requirements of Minn. Stat. § 216B.162. The Company disagreed with ME3's and the Department's contention that the Commission must apply socioeconomic and environmental factors in its consideration. The Company argued that the Commission's application of such factors to this petition would require a contested case proceeding or a formal rulemaking process.

NSP argued that the amendment to § 216B.162, which came into effect two days after the petition filing, cannot be applied retroactively to the petition proceeding. Application of environmental and socioeconomic factors, without notice to NSP or full exploration of material facts, would be a denial of due process.

B. The Department

The Department stated that there is no fundamental inconsistency between NSP's competitive rate proposal and Minn. Stat. § 216B.164, which requires that cogeneration facilities be encouraged. Because retention of Rahr as a customer would be a benefit to NSP ratepayers, the statutory emphasis on the protection of ratepayers and the public would prevail.

According to the Department's analysis, NSP would recover its incremental costs of serving Rahr under the competitive rate

proposal. The competitive rate would not exceed the difference between NSP's General Time-of-Day rates and the lowest-cost competitive energy supply available to Rahr. The Department therefore concluded that if socioeconomic or environmental factors were not applied, the discount would comply with the competitive rate statute.

The Department recommended, however, that the Commission apply socioeconomic and environmental factors, as set out in the August 1, 1993 statutory amendment. Although in the Department's opinion direct application of the amendment would be retroactive and therefore impermissible, the Commission should follow legislative intent and apply monetized socioeconomic and environmental values to the rate proposal.

The Department applied the environmental values from the Bonneville Power Administration to four emissions, subtracting the net environmental cost from NSP's revenues. Following this analysis, the Department concluded that the proposed rate would not cover incremental costs and would not meet the terms and conditions of Minn. Stat. § 216B.162.

C. ME3

ME3 argued that Rahr's proposed cogeneration facility is especially environmentally desirable and should be encouraged. ME3 urged the Commission to apply quantified socioeconomic and environmental factors and find that the cogeneration alternative should be chosen over the competitive rate alternative.

D. Rahr Malting Company

Rahr stated that it had spent approximately \$700,000 on its cogeneration facility to date. The cogeneration facility would come online in the future; the question was the most prudent date to choose, in light of Rahr's operations as a whole. Rahr argued that due process and fundamental fairness called for acceptance of the parties' proposed competitive rate discount. The Commission should consider the quantification of socioeconomic and environmental factors in its environmental externalities investigation docket¹, and apply its judgment, regardless of the factors, to the unique facts before it in this docket.

V. Commission Action

The Commission notes that NSP and Rahr have been negotiating for a competitive rate discount pursuant to Minn. Stat. § 216B.162

¹ Docket No. E-999/CI-93-583.

since approximately May of 1992, when NSP's competitive service rider was first approved by the Commission. The parties' negotiations came to fruition and they presented a competitive rate contract for Commission approval on March 3, 1993. When the Commission found that certain specific terms of that contract failed to comply with the competitive rate statute, the parties resumed negotiations with the mutual goal of resolving the Commission's objections. When the modified contract was filed on July 30, 1993, it represented a culmination of the parties' joint efforts which had begun over a year earlier.

While this matter has been divided procedurally into different dockets, it actually represents a single unified contract negotiation under the terms of the competitive rate statute, culminating in the final contract filed with the Commission on July 30, 1993. During the history of the proceedings, the parties appear to have made good faith efforts to file what is necessary and appropriate under the controlling statute. While the Commission always has the discretion to apply such factors as environmental or socioeconomic values, it would be unfair in this set of facts to widen the scope at this point to apply such factors. Nor would it be fair to find the record insufficient because the filing parties have failed to include evidence of these factors.

Under the unique facts of this ongoing history, the Commission will treat the petition presently before it as a modification of the previous petition first filed on March 3, 1993. Considering the parties' complete filing, the Commission finds that the competitive rate proposal complies with all requirements of Minn. Stat. § 216B.162. The parties have met the Commission's previous concerns regarding the cost of capital and depreciation. The Commission will approve the parties' proposed competitive rate filing, as modified.

The Commission notes that future competitive rate contracts will be considered under the competitive rate statute as amended. The burden will be on petitioners to supply the information necessary for the Commission to consider the environmental and socioeconomic impacts of the rates.

Finally, the Commission agrees with the Department that there is no fundamental inconsistency between the competitive rate statute and the cogeneration statute. The competitive rate statute, which became law after the enactment of the cogeneration statute, contains a prohibition against competition with district-heating utilities, but no restriction against competition with cogeneration facilities. Both statutes require the Commission to consider the public interest and ratepayer protection. As it has done in this case, the Commission is free to balance the relative benefits and burdens to ratepayers and the public under the competitive rate and the cogeneration scenarios. Having

performed the balancing in this case, the Commission has found that under these facts the competitive rate is consistent with the interests of ratepayers and the public.

ORDER

1. The Commission approves NSP's proposed competitive rate discount, as modified in the Company's July 30, 1993 filing.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Susan Mackenzie
Acting Executive Secretary

(S E A L)